

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**DONALD FEATHERSTON,
CONNIE FEATHERSTON,
Plaintiff,**

v.

**DRRF II SPE, LLC, SERVIS ONE, INC.
dba BSI FINANCIAL SERVICES, INC.,
MACKIE WOLF ZIENTZ & MANN, PC,
Defendants.**

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Civil Action No. 5:15-cv-375

NOTICE OF REMOVAL

Defendants DRRF II SPE, LLC (“DRRF”), Servis One, Inc. dba BSI Financial Services, Inc. (“BSI Financial”), and Mackie Wolf Zientz & Mann, PC (“MWZM” and together with DRRF and BSI, “Defendants”) hereby file this Notice of Removal pursuant to 28 U.S.C. Sections 1334, 1348, 1441, and 1446. In support of this Notice, Defendants state as follows:

SUMMARY

1. Debtors/Plaintiffs Donald Featherston and Connie Featherston (“Plaintiffs”) initially filed their Chapter 7 case in the United States Bankruptcy Court, Western District of Texas, San Antonio Division on January 5, 2015 under Case No. 15-50063 (the “Bankruptcy Case”).¹

2. Plaintiffs filed an action on April 6, 2015 the 73rd Judicial District Court for Bexar County, Texas, Cause No. 2015CI05654, in the matter styled *Donald Featherstone, Connie Feathersone v. DRRF II SPE, LLC, et al.* (the “State Court Action”).

3. The Bankruptcy Case was then closed on April 16, 2015.

¹ Defendants request this Court take judicial notice of Bankruptcy Case proceedings in the United States Bankruptcy Court for the Western District of Texas pursuant to Federal Rule of Evidence 201.

4. Because the State Court Action arises in or relates to the Bankruptcy Case under title 11, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

5. The allegations in *Plaintiff's Original Petition* [sic] (the "Petition") relate to the servicing and foreclosure of Plaintiffs' loan secured by their residence, located at 20615 Meandering Cir., San Antonio, TX 78258 and more particularly described as:

LOT 197, BLOCK 39, NEW CITY BLOCK 19215,
PROMONTORY POINTE, UNIT 8, PUD PHASE 3, CITY OF
SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO
PLAT THEREOF RECORDED IN VOLUME 9563, PAGE(S) 99,
DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS

(the "Property"). (*See Petition.*) Plaintiffs claim Defendants accelerated and wrongfully began foreclosure proceedings based on inaccurate accounting on the loan and wrongful charges for escrow, shortly before and during the time in which their bankruptcy case was pending. (*See Petition* at ¶¶12-14.) Based on these allegation, Plaintiffs bring claims for violations of the Texas Debt Collection Practices Act (the "TDCA") and the Texas Deceptive Trade Practices Act (the "DTPA"). (*See Petition* at ¶¶15-26.)

6. Attached hereto as Exhibit A is a copy of the Docket Sheet from the State Court Action, and true and correct copies of all pleadings filed in the State Court Action are attached within the contents of Exhibit B.

7. This Notice of Removal is timely under the provisions of 28 U.S.C. Section 1446(b). 28 U.S.C. § 1446(b)(2). None of Defendants have been served to date. Defendants are voluntarily appearing herein this day in filing their removal.

BASIS FOR REMOVAL

8. This Court has jurisdiction pursuant to 28 U.S.C. Section 1334(b).

9. A proceeding is core under 28 U.S.C. Section 157 “if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.” *Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925, 930 (5th Cir. 1999). The statute provides a non-exclusive listing of core proceedings, including “claims against the estate” and “orders to turn over property of the estate.” 28 U.S.C. § 157(b)(2)(B), (E). Plaintiffs’ claims against Defendants concern the bankruptcy laws of the United States under Title 11. *See* 11 U.S.C. § 541(a)(1); *see also Kane v. Nat’l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008) (“causes of action are included in assets that vest debtor’s estate upon bankruptcy filing”). The claims then affect the rights of the trustee, which thereby relates to a substantive right provided by Title 11 and makes them a core proceeding under the code.

10. In the alternative, the claims are “related to” the bankruptcy estate. “An action is ‘related to’ bankruptcy if the outcome could alter, positively or negatively, the debtor’s rights, liabilities, options, or freedom of action or could influence the administration of the bankruptcy estate.” *Edge Petroleum Operating Co. v. GPR Holdings, L.L.C. (In re TXNB Internal Case)*, 483 F.3d 292, 298 (5th Cir. 2007) (citing *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 752 (5th Cir. 1995)). By their claims Plaintiffs seek to enjoin enforcement of the Loan Agreement with Defendants. And Defendants’ anticipated counterclaims are for a judgment allowing foreclosure of Plaintiffs’ homestead. The outcome of either case would have a significant effect on the bankruptcy estate.

NOTICE

11. Concurrently with the filing of this Notice, Defendants will serve a copy of this Notice of Removal on Plaintiffs through their counsel of record, Rick Guerra, Eric Days, Brent

Smith, Law Offices of Rick Guerra, PLLC, 2211 Rayford Rd. Ste. 111 #134, Spring, Texas 77386.

12. Concurrently with the filing of this Notice, Defendants will also file a copy of this Notice of Removal with the Clerk of the 73rd Judicial District Court of Bexar County, Texas.

Respectfully submitted,

By: /s/ Mark D. Cronenwett
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MACKIE WOLF ZIENTZ & MANN, P. C.
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Attorneys for Defendants

LIST OF ALL KNOWN COUNSEL OF RECORD

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INDEX OF DOCUMENTS ATTACHED

- Exhibit A Copy of the Docket Sheet for 73rd Judicial District Court for Bexar County, Texas, Cause No. 2015CI05654;
- Exhibit B Pleadings in 73rd Judicial District Court for Bexar County, Texas, Cause No. 2015CI05654; and
- B-1 Plaintiffs' Original Petition, filed April 6, 2015.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of May, 2015, a true and correct copy of the foregoing document was delivered via regular U.S. mail to the counsel of record listed below:

Rick Guerra
Eric Days
Brent Smith
Law Offices of Rick Guerra, PLLC
2211 Rayford Rd. Ste. 111 #134
Spring, Texas 77386

/s/ Mark D. Cronenwett

MARK D. CRONENWETT